IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 2633 of 2005()

AGAINST THE ORDER DATED 23/09/2005 IN CMP 5690/05 IN CC.237/2002 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM

.....

REVN. PETITIONER: PETITIONER/ACCUSED:

K.V. CHANDRAN,
VAKAKKEKONIL, NEDUMKANDAM P.O., IDUKKI.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS: RESPONDENT-STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.P.RAVEENDRA BABU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

= = = = = = = = = = = = = =

Crl.R.P.No. 2633 of 2005

= = = = = = = = = = = = = = =

Dated this the 4th day of December, 2007

ORDER

Petitioner is the accused in C.C.No.237/2002 on the file of Chief Judicial Magistrate- Kottayam which is a prosecution under Section 138 of the Negotiable Instruments Act, 1881. He was found guilty of the offence and convicted by the trial court. The said conviction was confirmed in appeal. The lower appellate court modified the sentence to simple imprisonment for one month and to pay a sum of Rs.70,000/- as compensation under Section 357(3) Cr.P.C and on default to pay compensation, to suffer simple imprisonment for one month.

2. After undergoing the default sentence the revision petitioner filed C.M.P.No.5690/2005 before the trial court for cancelling the distraint warrant issued against him by the trial court on the ground that upon his undergoing the default sentence he has no subsisting liability to pay the compensation amount and therefore no proceedings could be initiated against him for realisation of the compensation amount The said contention was repelled by the trial court as per the impugned order dated 23.9.07. It is aggrieved by the said order that the

revision petitioner has preferred this revision.

3. Even though the learned counsel appearing for the revision petitioner reiterated the contentions of the revision petitioner, in view of the proviso to Section 421 Cr.P.C as well as the decisions reported in **Sugandhi v. Jagadeeshan** (2002(1) KLT 581 and **SajiKumar v. Soman Pillai** (2006(3)KLT 679), the above contention is not liable to be upheld. Even if the accused undergoes the default sentence if there is a direction to pay compensation, the serving of the default sentence will not wipe off the liability to pay compensation amount and the court will be within its power to take steps for realisation of the compensation amount as if it were a fine. Hence the contention lacks merit and is rejected.

4. The learned counsel appearing for the revision petitioner then submitted that the petitioner may be given some breathing time to pay the compensation amount. The petitioner is given two months from today to pay the compensation amount failing which the trial court shall be entitled to initiate proceedings for realilsation of the compensation amount.

V. RAMKUMAR, JUDGE

sj